

HEALTH CARE WEEK V, DAY II

Mr. McCONNELL. Mr. President, the American people want health care reform. There is no question about that. But they have serious concerns about some of the proposals coming out of Washington, concerns that I have outlined on the Senate floor over the past few weeks. And Americans are also increasingly concerned about the way these proposals are being sold. Specifically, they are concerned that the same mistakes that were made on the economic stimulus bill are about to be made again—only this time, those mistakes would be all but permanent and would directly affect every single American family.

Here is what they are concerned about:

Earlier this year, advocates of the stimulus said that the bill had to pass right away, with minimal scrutiny and minimal bipartisan support. They gave the American people less than 24 hours to review one of the costliest pieces of legislation in history, and then they hoped for a good result. The reason for the rush is clear. Proponents of the stimulus were concerned that public support would start to fade if people got a closer look at the details. So they short-changed the debate and overpromised on results. And now their predictions are coming back to bite them.

Here is what they said at the time.

They said that if the stimulus passed, unemployment wouldn't rise above 8 percent. Unemployment is now approaching 10 percent. They said the stimulus was necessary to jumpstart the economy. Yet now, with about a half million jobs lost every month, they have started to admit that they simply "misread" the economy.

These were costly mistakes, and we can't take them back.

But we can prevent these same kinds of mistakes on health care. If the stimulus taught us anything it is that Americans should be skeptical any time someone in Washington rushes them into a major purchase with taxpayer dollars. We would walk away from any car salesman who tried to rush us into buying a car—even if it was a cheap one.

We should be just as skeptical of a lawmaker who tries to do the same thing with our tax dollars and trillions in borrowed money. And now that Americans are hearing the same kinds of arguments about health care that we heard about the stimulus, the taxpayer antenna should begin to go up.

Now it is time for advocates of a government-run health plan to actually take the time to determine what reforms will actually save us money and increase access to care while preserving the things people like about our system.

Taking time may be frustrating to those who want to rush a health care bill through Congress before their constituents have a chance to see what they are buying. But the fact that the public is increasingly concerned about

government-run health care isn't reason to rush. It is reason to take the time we need to get it right—and to make a serious effort to get members of both parties to work out reforms that a bipartisan majority can agree to, several of which I have enumerated many times already on the Senate floor.

We should reform our medical liability laws to discourage junk lawsuits and bring down the cost of care; we should encourage wellness and prevention programs that have been successful in cutting costs; we should encourage competition in the private insurance market; and we should address the needs of small businesses without creating new taxes that kill jobs.

Advocates of government health care should also be exceedingly cautious about the predictions they make this time around. We already know that many of the promises that are being made about a government-run health plan are unrealistic—such as the claim that everyone who likes the insurance they have will be able to keep it and that the cost of such health care proposals won't add to the national debt.

As Democrats rushed the stimulus funds out the door, they also predicted it wouldn't be wasted. Yet every day we hear about another outrageous project that it is being used to fund. I have listed some of these projects in previous floor remarks, such as a \$3.4 million turtle tunnel in Florida. Americans struggling to hold onto their homes and their jobs want to know why their tax dollars are being spent on such wasteful and needless projects.

Americans were overpromised on the stimulus. This time they want the facts.

Soon, the Government Accountability Office will issue a report that gives us an even greater sense of the problems with the stimulus. I am concerned that this report provide an even clearer accounting of the mistakes that were made with that bill—and the flawed manner in which it was sold to the American people.

Americans who are now waking up to headlines about the problems with the stimulus don't want to be told a few months from now that the people who sold them a government-run health care system misread the state of our health care industry, or that the health care plan they are proposing was based on faulty assumptions.

Americans don't want to wake up a few years from now with their families enrolled in a government-run health care system because some here in Washington decided to rush and spend a trillion dollars and let the chips fall where they may.

The American people don't want us to rush through a misguided plan that pushes them off of their health insurance and onto a government plan that denies, delays, and rations care. On the stimulus, Americans saw what happens when Democrats rush and spend. When it comes to health care, they are de-

manding we take the time to get it right.

SOTOMAYOR NOMINATION

Mr. McCONNELL. Mr. President, last week, the Supreme Court decided the case of *Ricci v. DeStefano* in which it ruled that the city of New Haven, CT, unlawfully discriminated against a number of mostly White firefighters by throwing out a standardized employment promotion test because some minority firefighters had not performed as well as they had.

In this case, the Supreme Court was correct in my view. The government should not be allowed to discriminate intentionally on the basis of race on the grounds that a race-neutral, standardized test—which is administered in a racially neutral fashion—results in some races not performing as well as others.

Yet regardless of where one comes out on this question, there are at least two aspects of how all nine Justices handled this very important case that stand in stark contrast to how Judge Sotomayor and her panel on the Second Circuit handled it—and which call into question Judge Sotomayor's judgment.

First, this case involves complex questions of Federal employment law; namely, the tension between the law's protection from intentional discrimination—known as "disparate treatment"—discrimination—and the law's protection from less overt forms of discrimination, known as "disparate impact" discrimination.

It also involves important constitutional questions—such as whether the government, consistent with the 14th amendment's guarantee of equal protection under the law, may intentionally discriminate against some of its citizens in the name of avoiding possible discriminatory results against other of its citizens.

Every court involved in this case realized that it involved complex questions that warranted thorough treatment—every court, that is, except for Judge Sotomayor's panel. The district court, which first took up the case, spent 48 pages wrestling with these issues. The Supreme Court devoted 93 pages to analyzing them. By contrast, Judge Sotomayor's panel dismissed the firefighters' claims in just 6 sentences—a treatment that her colleague and fellow Clinton appointee, Jose Cabranes, called "remarkable," "perfunctory," and not worthy "of the weighty issues presented by" the firefighters' appeal.

It would be one thing if the *Ricci* case presented simple issues that were answered simply by applying clear precedent. But the Supreme Court doesn't take simple cases. And at any rate, no one buys that this case was squarely governed by precedent, not even Judge Sotomayor.

We know this because in perfunctory dismissing the firefighters'